

LABEL, IN PART: "Caldwell's Mayonnaise Contains Oil * * * Made by Caldwell's Cafeteria, Columbia, S. C. Distributed by Dixie Produce Co., Columbia, S. C. * * * Made With Mineral Oil."

NATURE OF CHARGE: Adulteration, Section 402 (a) (1), the 29-case-lot contained 65 percent, and the 86-case-lot contained 55 percent, of added mineral oil, a deleterious substance, which may have rendered the product injurious to health; and, Section 402 (b) (2), mineral oil had been substituted in whole or in part for edible oil, a normal constituent of mayonnaise.

DISPOSITION: On April 6, 1946, Fraley's Food Fair, Statesville, N. C., claimant, filed an answer admitting the presence of mineral oil, but denying the adulteration charge, and denying specifically that mineral oil is a deleterious substance, and denying further that vegetable oil is the only normal constituent of mayonnaise. Subsequently, counsel for the Government and the claimant entered into a stipulation, waiving trial by jury and agreeing that the only question that would be tried would be "Is mineral oil, when contained in mayonnaise in the proportions set forth in the libel, a deleterious substance which may render the mayonnaise injurious to health?"

On July 10, 1946, the case came on for trial before the court on the pleading, stipulation of facts, and affidavits filed on behalf of the Government and claimant. The court, after hearing the evidence, found the product adulterated as charged, condemned the product, and ordered it destroyed.

11483. Adulteration of mayonnaise. U. S. v. 18 Jars * * *. (F. D. C. No. 20738. Sample No. 65545-H.)

LIBEL FILED: On or about August 27, 1946, District of New Jersey.

ALLEGED SHIPMENT: On or about December 4, 1945, and March 5, 1946, by the Waldorf Food Products Co., from Philadelphia, Pa.

PRODUCT: 18 1-gallon jars of mayonnaise at Vineland, N. J.

LABEL, IN PART: "Waldorf Pure Mayonnaise Composed of egg yolk, salad oil, sugar, vinegar and spices."

NATURE OF CHARGE: Adulteration, Section 402 (a) (1), the article contained approximately 79 percent of added mineral oil, a deleterious substance, which may have rendered the product injurious to health; Section 402 (b) (1), a valuable constituent, an edible vegetable oil, had been in whole or in part omitted from the article; Section 402 (b) (2), a product containing mineral oil had been substituted wholly for mayonnaise, which contains edible vegetable oil and does not contain mineral oil; and, Section 402 (b) (4), mineral oil had been added to the product or mixed with it so as to reduce its quality or strength.

DISPOSITION: September 27, 1946. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

11484. Adulteration of Merry-Maise (salad dressing). U. S. v. 144 Cases, etc. (and 5 other seizure actions). Cases consolidated. Tried to the court and jury; verdict for the Government. Decrees of condemnation and destruction. (F. D. C. Nos. 20571, 20739, 20786, 20997, 21011, 21219. Sample Nos. 11756-H, 57128-H, 57129-H, 57340-H, 57358-H, 57359-H, 57561-H, 57563-H, 57575-H, 57576-H.)

LIBELS FILED: Between the dates of July 31 and October 7, 1946, District of Maine and District of New Hampshire.

ALLEGED SHIPMENT: Between the approximate dates of June 11 and August 21, 1946, by the Suzanne Processed Oil Co., from Boston, Mass.

PRODUCT: Merry-Maise. 144 cases at Portland, Maine, 51 cases at Rockland, Maine, and 150 cases at Manchester, N. H. Each case contained from 4 to 24 jars of the product in gallon, quart, pint, and half-pint sizes.

LABEL, IN PART: (Jars) "Non-Nutritive Dressing for Salads for weight reducing diets Suzanne Merry-Maise."

NATURE OF CHARGE: Adulteration, Section 402 (a) (1), the various lots of the article contained approximately 77 percent added mineral oil, a deleterious substance, which may have rendered the product injurious to health.

DISPOSITION: The Suzanne Processed Oil Co. appeared as claimant in each of the libel actions, filed answers denying the charges of adulteration, and demanded a jury trial of all issues of fact. The claimant requested removal of the two Maine actions to the District of New Hampshire for consolidation with

the four actions pending in that State. The District Court of the United States for the District of New Hampshire thereupon entered orders of removal and consolidation of the six actions, and the case came on for trial before the court and jury on January 14, 1947. At the conclusion of the trial, the court delivered the following charge to the jury:

CONNOR, *District Judge*: "The hour is late, but it is thought desirable to have this case submitted to you before we close for the day, and I don't think you will find the charge too lengthy or too time-consuming.

"These are actions, gentlemen, brought by the United States of America against a certain article which is described on the label as 'Non-Nutritive Dressing for Salads for Weight Reducing Diets Suzanne Merry-Maise. Ingredients: U. S. P. Mineral oil, eggs, salt, sugar and spices.'

"The procedure under which we are operating is known in Federal practice as one in Admiralty, and the process by which these actions are initiated is known as a libel. Altogether there are six libels against the above-described product, all designating various amounts of cases of containers of the product. Four of these so-called libels were brought within the District of New Hampshire and two were brought within the District of Maine, and the language in all the libels is essentially the same. The law permits consolidation of these cases when the same issues of adulteration are involved, and all have been, as I say, tried by you gentlemen in these actions.

"The charge as brought by the government is that the aforesaid article was adulterated in interstate commerce within the meaning of 21 USC 342, paragraph a, sub-paragraph 1, in that it contains approximately 77% added mineral oil, a deleterious substance which may render such article injurious to health. By reason thereof, it is alleged that the article is held illegally within the jurisdiction of this court, and is liable to seizure and condemnation.

"The claimant has admitted that each of the six lots of Suzanne Merry-Maise was shipped in interstate commerce, and has also admitted that the article contained at least 77% mineral oil.

"Suzanne Merry-Maise is a food within the meaning of 21 USC 321 (f), because it is a product used for food for man. The label on the product so indicates. A food sold under a distinctive name such as this product Merry-Maise is within the purview of the provisions of the law with respect to adulteration. In conformity with the complaint in the said libel, an order was issued directed to the United States Marshal, and thereunder he took into his possession the articles in question. All of the items of this merchandise have been shipped in interstate commerce from Boston, Massachusetts, into the District of New Hampshire and into the District of Maine.

"Suzanne Processed Oil Company, a corporation established by law with its principal place of business in Boston, the manufacturer of the article in question, comes into this court as claimant, and denies that the article contains a deleterious substance, and [denies that it] is liable to seizure and condemnation, as alleged by the government, and thus the issue is joined.

"It is the claim of the government that the article is adulterated, in that it bears or contains a deleterious substance which may render it injurious to health. This is denied by the claimant, and so the issue that will be submitted to you narrows itself to this proposal: Does the salad dressing which has been seized and proceeded against in these actions contain a deleterious substance which may render it injurious to health?

"Possibly this language needs further amplification. The word 'may' is here used in its ordinary and usual significance. It connotes a tendency or possibility that if the substance complained against may possibly injure the health of any user, it comes within the ban of the statute. If it cannot by any possibility, when the facts are reasonably considered, injure the health of any consumer, even though it contains a small addition of deleterious ingredient, such product may not be condemned under the law. The word 'deleterious' as used in the statute means harmful, destructive, noxious, pernicious.

"It is not the contention of the government that the mineral oil which is present in the Merry-Maise is a poisonous substance, and there is no evidence in this case that it is. The government does contend that the mineral oil in the Merry-Maise is a deleterious substance which may render the article injurious to health.

"The burden is upon the United States of America to establish that the added deleterious ingredient may render the product injurious to health. Merry-Maise may be consumed as a food by the strong and the weak, the old and the

young, the well and the sick, and if it may possibly injure the health of any of these, it comes within the ban of the statute.

"The government is required under its burden of proof to prove its case by a preponderance of the evidence. You are instructed that the mineral oil in this dressing is an added substance within the meaning of the statute.

"As to the deleterious nature of the added mineral oil, it is not necessary for the United States of America to prove that mineral oil as such under all circumstances is a deleterious substance. The United States of America need only show that the mineral oil in Merry-Maise is a deleterious substance.

"This is an action *in rem*, that is, the action is against the thing—in this case, against the various lots of Merry-Maise. The theory of the law is that the seized articles of food have themselves violated the law. If you find that the seized articles are adulterated, a decree of condemnation will be entered against the goods. No penalties will attach or be assessed against any individual or corporation.

"You have had before you, gentlemen, a number of witnesses who have taken contra positions in almost every instance. Your function as jurymen is to decide upon a question of fact and apply the law to that fact. But in the present instance you are primarily concerned with a finding of fact, because that is what will be submitted to you as your first duty. Now in order to determine facts, of course it is necessary for you gentlemen to weigh the evidence, and that evidence is adduced either in the process of testimony on the stand or exhibits, such as have been offered here, and you are to consider that testimony in arriving at your final conclusion.

"In determining the evidence, it becomes necessary for you to consider the testimony of the witness, whether or not he appears to be telling the truth, to what extent you feel that his testimony is entitled to full credence, and whether or not he has any interest in the outcome of this case; whether he is simply an interested witness or, as I say, one who might have a definite interest in the outcome of this litigation. All of those factors are to be considered, gentlemen, in determining what your finding is to be.

"Now there will be submitted to you in this case what is known as a Special Verdict. It will be in effect an inquiry for you gentlemen to determine whether or not this article in question contains any deleterious matter which may be injurious to the health of a human being. Now you will be asked to answer either Yes or No, and there will be a place set forth on the blank for your answer, and also a place for the signature of the Foreman.

"Now you will have with you these various exhibits. You are to make such use of them as you think they entitle you to make.

"And the question—I will read it from the blank, so there will be no misunderstanding, is as follows, gentlemen:

Does the Merry-Maise salad dressing involved in these actions which has been seized by the Federal government contain a deleterious substance which may render the product injurious to the health of a human being? Answer Yes or No.

A place is reserved for your answer and a place is reserved for your signature, Mr. Foreman. When you have arrived at your answer, and when you have concluded your duties, you will notify the Marshal, who will have you in charge, and be brought back into open court."

On January 23, 1947, the jury returned a verdict for the Government. On February 28, 1947, in accordance with the verdict, judgments of condemnation were entered and all lots of the product were ordered destroyed.

11485. Adulteration of salad dressing. U. S. v. 15 Cases * * *. (F. D. C. No. 21346. Sample No. 15471-H.)

LIBEL FILED: On October 23, 1946, Northern District of Illinois.

ALLEGED SHIPMENT: On or about August 29, 1945, by Old World Foods, Inc., and the Empire Freight Co., Inc., from Los Angeles, Calif.

PRODUCT: 15 cases, each containing 24 1-pint jars, of salad dressing at Chicago, Ill.

LABEL, IN PART: Barra's Low-Calory Dressing Prepared by the Barra Co., Los Angeles, California."

NATURE OF CHARGE: Adulteration, Section 402 (a) (1), the article contained 55.24 percent of mineral oil, a deleterious substance, which may have rendered the product injurious to health.